UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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ABCNY, INC.,

                        Plaintiff,

            -against-   23 **CIVIL** 9094 (JMF)

                                                              <u>JUDGMENT</u>

AXIS SURPLUS INSURANCE COMPANY et al.,

                        Defendants.
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       It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons

stated in the Court's Opinion and Order dated June 25, 2024, Defendants' motion to dismiss is

GRANTED, and ABCNY's claims are dismissed. Further, the Court has declined to *sua sponte* grant

ABCNY leave to amend. To be sure, leave to amend a pleading should be freely given "when justice

so requires." Fed. R. Civ. P. 15(a)(2). But it is "within the sound discretion of the district court to

grant or deny leave to amend," *McCarthy v. Dun & Bradstreet Corp*., 482 F.3d 184, 200 (2d Cir.

2007), and there are several reasons to exercise that discretion to deny leave here. First, the problems

with ABCNY's claims are substantive, so amendment would be futile. *See, e.g.*, *Roundtree v. NYC*,

No. 19-CV-2475 (JMF), 2021 WL 1667193, at *6 (S.D.N.Y. Apr. 28, 2021) (citing cases). Second,

ABCNY does not request leave to amend or suggest that it is in possession of facts that would cure

the problems with the dismissed claims. *See, e.g.*, *Clark v. Kitt*, No. 12-CV-8061 (CS), 2014 WL

4054284, at *15 (S.D.N.Y. Aug. 15, 2014) ("A plaintiff need not be given leave to amend if [it] fails

to specify how amendment would cure the pleading deficiencies in [its] complaint."); *accord*

TechnoMarine SA v. Giftports, Inc., 758 F.3d 493, 505- 06 (2d Cir. 2014). Finally, the Court granted

ABCNY leave to amend its original complaint in response to Defendants' first motion to dismiss,

which raised the defects in the claims discussed above, and explicitly warned that ABCNY would "not be given any further opportunity to amend the complaint to address issues raised by the motion to dismiss." ECF No. 16. Judgment is entered in favor of Defendants; accordingly, the case is closed.

Dated: New York, New York

June 25, 2024

DANIEL ORTIZ

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Acting Clerk of Court

BY: K. mango

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Deputy Clerk